



Guidance Circular

GC No: 960.4-1
Subject: Determining whether a license is required based on mixed U.S. and foreign involvement in a private remote-sensing space system
Date: March 1, 2022

Guidance Circulars (GC) are intended to provide guidance to entities subject to or potentially subject to the Land Remote Sensing Policy Act of 1992 (51 U.S.C. § 60101 *et seq.*) and the National Oceanic and Atmospheric Administration's (NOAA's) implementing regulations at 15 CFR Part 960. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. The document is only intended to provide clarity to the public regarding existing requirements under the law or agency policies.

If you have suggestions for improving this GC, we invite you to provide feedback to CRSRA at crsra@noaa.gov, noting the number of the GC you are discussing in your email.

Applicable Statute: 51 U.S.C. § 60121, 60122

Applicable Regulations: 15 C.F.R. 960.4, defining "Person," "U.S. person," and "Operate"

Overview of Issue:

The Land Remote Sensing Policy Act of 1992 authorizes the Department of Commerce (delegated to NOAA) to license private entities to operate private remote sensing space systems, and prohibits the operation of remote sensing space systems without such a license.

The Act's jurisdiction extends to persons that are "subject to the jurisdiction and control of the United States." 51 U.S.C. § 60122(a). To be licensed under this Act, an entity must *either* be a U.S. person (as defined and discussed below), *or* be operating the system (as defined and discussed below) within the United States. Accordingly, the "prohibitions" section of the regulations prohibits "[a]ny person who operates a system from the United States and any person who is a U.S. person" from certain acts including operating a system without a license.

15 C.F.R. § 960.16. In other words, the regulations forbid any “person” (meaning any entity or individual) of any nationality from operating the system inside the United States. They also forbid any U.S. person (defined below) from operating the system anywhere in the world. This is because NOAA’s jurisdiction is over U.S. nationals *and* remote sensing activities that take place within the United States.

To determine which entity is responsible for the system (meaning which entity needs a license to avoid facing penalties for operating without a license), three important regulatory definitions apply (each found in 15 C.F.R. § 960.4), defining “operate,” “person,” and “U.S. Person”:

Operate

In the modern remote sensing industry, there can be several entities involved in a given system. NOAA licenses only one entity per system (see the definition of “private remote sensing space system” in 15 C.F.R. § 960.4, and note that this can include more than one remote sensing instrument).

The definition of “operate” dictates which entity is primarily responsible:

Operate means to have decision-making authority over the functioning of a remote sensing instrument. If there are multiple entities involved, the entity with the ultimate ability to decide what unenhanced data to collect with the instrument and to execute that decision, directly or through a legal arrangement with a third party such as a ground station or platform owner, is considered to be operating that system.

The preamble to the final rule, 85 FR 30790 (July 20, 2020) provides further explanation of this provision, noting:

Commerce narrowed the definition of “operate” to clarify which activities qualify. The revised definition makes clear that the entity with decision-making authority over the remote sensing instrument’s functioning is operating the system. This would include the entity deciding what to image and how to accomplish the desired imaging, but not an individual or service provider merely implementing those commands. This is true regardless of how the commands technically pass to the satellite. In most cases, Commerce anticipates that the instrument owner will be the one who operates, but this may not always be the case.

In addition, Commerce intends that activities such as operating a ground station as a service or operating a spaceborne platform as a service, without more, are not “operating” a remote sensing space system.

There are two examples given in the preamble of how NOAA determines who is “operating” a system.

Person

The definition of “person” clarifies which kind of entities NOAA considers:

Person or private sector party means any entity or individual other than agencies or instrumentalities of the U.S. Government.

U.S. Person

Finally, the definition of “U.S. person” explains which entities and individuals are always under NOAA’s jurisdiction because of their U.S. nationality:

U.S. person means:

- (1) Any individual who is a citizen or lawful permanent resident of the United States; and*
- (2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State, the District of Columbia, Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.*

The preamble further explained:

Commerce makes a distinction between “person” and “U.S. person.” As defined in this part, a “person” includes anyone, whether foreign or domestic and including juridical persons, who is not the U.S. Government. A “person” is required to obtain a license from Commerce to operate a private remote sensing space system in the United States.

By contrast, a “U.S. person” is a United States national, either natural or juridical. A “U.S. person” must obtain a license from Commerce to operate anywhere in the world, inside or outside the United States. The definition of “U.S. person” does not limit who may apply for and receive a license from Commerce. Any person who desires to operate a system from within the United States is eligible to apply for a license. “U.S. person,” instead, only determines who must obtain a license from Commerce to operate anywhere outside the United States.

Therefore, putting these definitions together, an operator of a private remote sensing space system (meaning, the person or entity exercising ultimate decision-making authority over the functioning of the remote sensing space instrument) needs a NOAA license if:

- The operator is a “U.S. person,” regardless of where it is operating the system, meaning either the operator is:
 - a U.S. individual, operating the system independently (not as an employee or other part of a corporation, university, etc., which is a highly unusual situation); or
 - a “juridical person” (entity) that has been organized or exists under U.S. law, such as a corporation organized under state law;

OR

- The operator is operating from within the United States, *regardless* of whether the operator is a “U.S. person.

	Operating (as defined above) from within the U.S.	Operating (as defined above) from outside the U.S.
U.S. Person (as defined above)	License Required	License Required
Non-U.S. Person (as defined above)	License Required	License Not Required

CRSRA Approach to these Determinations:

Both a system operator’s U.S. personhood, and operation of a system from within the United States, are sufficient to make a system fall within NOAA’s jurisdiction and therefore need a license. In other words, if the operator is a U.S. person, NOAA has jurisdiction and a license is required, and if the operation occurs from within the United States, NOAA has jurisdiction and a license is required. Both need not be true.

NOAA’s Commercial Remote Sensing Regulatory Affairs (CRSRA) office generally begins its analysis by determining the nationality of the entity that is operating the sensor—usually, an academic institution, non-profit organization, or private corporation. For example, if the operator is a Delaware corporation, a Minnesota university, or a Texas individual, the operator is a U.S. person, and will need a license no matter where they operate.

Some confusion has arisen when there is a difference between the individual nationality of the human persons who work for an entity and the entity itself. For example, U.S. individuals may work for a Canadian remote sensing company. Alternatively, Canadian individuals may work for a remote sensing company that is organized as a Delaware corporation. In either of those cases, it is the nationality of the “person” who “operates” the system that matters. Typically, the corporate entity is the “person” who “operates” for legal purposes. This is because, under the definition of “operate,” what matters is the ultimate control over the remote sensing instrument. When a corporate entity is engaged in remote sensing, the corporation’s decisions, rather than an individual’s, govern what happens.

Therefore, so long as the U.S. employees of the Canadian company cannot overrule the Canadian company’s imaging decisions, the Canadian company is the “operator.” Whether NOAA has jurisdiction and a license is required would then depend on where the Canadian company is “operating.” If it does so from within the United States, NOAA would have jurisdiction and a license would be required.

Other difficult scenarios involve multiple entities. For example, a foreign corporation may have a subsidiary incorporated in the United States. The U.S. subsidiary may collect imaging orders from U.S.-based customers, but the orders are sent to the foreign parent company, which tasks the system with collecting the data required to fulfill the order. The foreign parent company could decline to fulfill the order for any reason. In this case, the foreign parent company is the “operator,” and neither it nor the U.S. subsidiary requires a NOAA license.

Alternatively, as part of its ground station network, a foreign corporation uses a ground station in the United States to send commands and receive data from a remote sensing system. The authority to send commands controlling the remote sensing instrument, however, is made by the *foreign* corporation from a location *outside* the United States. This foreign corporation does not require a NOAA license.

The above examples are generalities. NOAA’s determination in each case would depend on the evidence in that case. NOAA would look at what the evidence shows about who is “operating” the system under the definition of “operate.” If that operation is occurring from within the United States, a license is required. If the operation is not occurring from within the United States, NOAA would look to the identity of the person who is “operating.” If that person (whether a human person or a legal entity) is a “U.S. Person” as defined, NOAA would have jurisdiction and a license would be required.

Additional Examples:

Operator	Details of Operator	Location of Operation	NOAA Jurisdiction?
Delaware LLC	Staffed by U.S. and international employees	New Mexico, USA	Yes
Canadian corporation	Staffed by U.S. and Canadian employees	Ontario, Canada	No
Delaware LLC	Staffed by French employees	Texas, USA	Yes
Delaware LLC	Staffed by German employees	Germany	Yes
U.K. corporation	Staffed by U.S. employees	U.K.	No
German corporation	Staffed by German employees	Alaska, USA	Yes

Opportunity for Feedback: We welcome any feedback you may have about this GC. Please contact CRSRA at crsra@noaa.gov.